



IN THE COURT OF CRIMINAL APPEALS OF TEXAS

NO. WR-91,565-01

EX PARTE KIRKDRICK DERRELL AUSTIN, Applicant

**ON APPLICATION FOR A WRIT OF HABEAS CORPUS
CAUSE NO. 17-04-16007A IN THE 506TH DISTRICT COURT
FROM WALLER COUNTY**

Per curiam. Yeary, J., concurred.

OPINION

This is an actual innocence case with accompanying *Brady*, ineffective assistance, and involuntary-plea claims. *Ex parte Elizondo*, 947 S.W.2d 202 (Tex. Crim. App. 1996); *Ex parte Tuley*, 109 S.W.3d 388 (Tex. Crim. App. 2002); *Brady v. Maryland*, 373 U.S. 83 (1963); *Ex parte Morrow*, 952 S.W.2d 530 (Tex. Crim. App. 1997); *Strickland v. Washington*, 466 U.S. 668 (1984). On his guilty plea, Applicant was convicted of burglary of a habitation and sentenced to four years' imprisonment. Applicant, through habeas counsel, filed this application for a writ of habeas corpus in the county of conviction, and the district clerk forwarded it to this Court. *See* TEX. CODE CRIM. PROC. art. 11.07.

The trial court finds that Applicant did not commit the offense of burglary of a habitation. It

finds that Applicant is actually innocent, and it finds that Applicant's other claims have merit. The trial court recommends granting habeas relief.

All of the trial court's findings of fact and conclusions of law are supported by the record and applicable law. They are adopted by this Court. Applicant is actually innocent. Relief is granted. The judgment in cause number 17-04-16007 in the 506th District Court of Waller County is set aside. If Applicant is in the physical custody of Texas prison officials, Applicant is remanded to the custody of the Sheriff of Waller County. The trial court shall issue any necessary bench warrant within ten days from the date of this Court's mandate.

Copies of this opinion shall be sent to the Texas Department of Criminal Justice—Correctional Institutions Division and the Board of Pardons and Paroles.

Delivered: December 9, 2020
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